Supreme Court, U.S.
FILED
FEB 6 1998
CLERK

No. 97-156

In The

Supreme Court of the United States

OCTOBER TERM, 1997

RANDON BRAGDON, D.M.D., *Petitioner,*

v.

SIDNEY ABBOTT, *ET AL.*, *Respondents.*

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF OF THE AIDS ACTION COUNCIL, AIDS NATIONAL INTERFAITH NETWORK, AMERICAN ASSOCIATION ON MENTAL RETARDATION, AMERICAN ASSOCIATION OF RETIRED PERSONS, AMERICAN CIVIL LIBERTIES UNION, AMERICAN COUNCIL OF THE BLIND, AMERICAN FOUNDATION FOR AIDS RESEARCH, *ET AL.*, AS *AMICI CURIAE* SUPPORTING RESPONDENTS

[Additional *Amici Curiae* Listed Inside Cover]

Steven R. Shapiro
Jennifer Middleton
Matthew Coles
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
125 Broad Street
New York, New York 10004
(212) 549-2600

Of Counsel:
Robert A. Long, Jr.
Alexandra T.V. Edsall
Grail P. Walsh
COVINGTON & BURLING
1201 Pennsylvania Ave., N.W.
P.O. Box 7566
Washington, D.C. 20044
(202) 662-6000

Chai R. Feldblum
Counsel of Record
Associate Professor of Law
Federal Legislation Clinic
GEORGETOWN UNIVERSITY LAW CENTER
600 New Jersey Ave., N.W.
Washington, D.C. 20001
(202) 662-9595

February 1998

Counsel for Amici Curiae

BEST AVAILABLE COPY

ADDITIONAL *AMICI*:

AMERICAN CONGRESS OF COMMUNITY SUPPORTS & EMPLOYMENT SERVICES, AIDS LEGAL REFERRAL PANEL OF THE SAN FRANCISCO BAY AREA, AMERICAN FOUNDATION FOR THE BLIND, AMERICAN NETWORK OF COMMUNITY OPTIONS AND RESOURCES, AMERICANS FOR DEMOCRATIC ACTION, INC., AMERICANS WITH DISABILITIES VOTE, THE ARC OF THE UNITED STATES, BAY AREA LAWYERS FOR INDIVIDUAL FREEDOM, BAZELON CENTER FOR MENTAL HEALTH LAW, BLINDED VETERANS ASSOCIATION, CENTER FOR LAW IN THE PUBLIC INTEREST, CENTER FOR WOMEN POLICY STUDIES, CHILDREN AND ADULTS WITH ATTENTION DEFICIT DISORDERS, CITIES ADVOCATING EMERGENCY AIDS RELIEF COALITION, COALITION FOR THE HOMELESS, COMMITTEE FOR CHILDREN, DISABILITY RIGHTS COUNCIL OF GREATER WASHINGTON, EMPLOYMENT LAW CENTER, EVANGELICAL LUTHERAN CHURCH IN AMERICA, GAY AND LESBIAN MEDICAL ASSOCIATION, GAY MEN'S HEALTH CRISIS, HUMAN RIGHTS CAMPAIGN, INTERNATIONAL CONFERENCE ON TRANSGENDER LAW & EMPLOYMENT POLICY, LAWYERS FOR HUMAN RIGHTS, LEARNING DISABILITIES ASSOCIATION OF AMERICA, LEGAL ACTION CENTER, NATIONAL ASSOCIATION OF PEOPLE WITH AIDS, NATIONAL ASSOCIATION OF PROTECTION AND ADVOCACY SYSTEMS, NATIONAL ASSOCIATION OF SOCIAL WORKERS, INC., NATIONAL CENTER FOR LESBIAN RIGHTS, NATIONAL COUNCIL OF THE CHURCHES OF CHRIST (USA), NATIONAL COUNCIL OF JEWISH WOMEN, INC., NATIONAL EMPLOYMENT LAWYERS ASSOCIATION, NATIONAL GAY AND LESBIAN TASK FORCE, NATIONAL HEALTH LAW PROGRAM, INC., NATIONAL HEMOPHILIA FOUNDATION, NATIONAL LATINO/A LESBIAN AND GAY ORGANIZATION, NATIONAL LESBIAN AND GAY HEALTH ASSOCIATION, NATIONAL LESBIAN AND GAY LAW ASSOCIATION, NATIONAL MINORITY AIDS COUNCIL, NATIONAL MULTIPLE SCLEROSIS SOCIETY, NATIONAL NATIVE AMERICAN AIDS PREVENTION CENTER, NATIONAL ORGANIZATION ON DISABILITY, NATIONAL ORGANIZATION FOR RARE DISORDERS, INC., NATIONAL PARENT NETWORK ON DISABILITIES, NATIONAL THERAPEUTIC RECREATION SOCIETY, NEW YORK LAWYERS FOR THE PUBLIC INTEREST, INC., NISH, PROJECT INFORM, RESOLVE, TITLE II COMMUNITY AIDS NETWORK, AND UNION OF AMERICAN HEBREW CONGREGATIONS

BEST AVAILABLE COPY

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES iii

INTEREST OF THE *AMICI CURIAE* 1

SUMMARY OF THE ARGUMENT 3

ARGUMENT 4

I. THE DEFINITION OF DISABILITY UNDER THE AMERICANS WITH DISABILITIES ACT IS INTENTIONALLY BROAD TO ACHIEVE THE CIVIL RIGHTS PURPOSES OF THE LAW 4

II. CONGRESS EXPLICITLY REJECTED ATTEMPTS TO EXCLUDE PEOPLE WITH AIDS AND ASYMPTOMATIC HIV INFECTION FROM THE DEFINITION OF DISABILITY 11

III. CERTAIN SERIOUS MEDICAL CONDITIONS, INCLUDING ASYMPTOMATIC HIV INFECTION, ALWAYS MEET THE STATUTORY DEFINITION OF A "DISABILITY" 19

A. The Inherent Characteristics of Certain Impairments Eliminate Any Need for Proving the Impairment Limits a Particular Individual's Life Activities 20

B. HIV Infection Is Always a Disability Under the ADA Because Its Inherent Characteristics Substantially Limit One or More Major Life Activities 23

IV. COURTS SHOULD NOT DEFER TO INDIVIDUAL HEALTH CARE PROVIDERS IN DETERMINING ISSUES OF "DIRECT THREAT" 28

CONCLUSION 30

APPENDIX . . . . . 1(a)

TABLE OF AUTHORITIES

Page

Cases

Anderson v. Gus Mayer Boston Store of Delaware, 924 F. Supp. 763 (E.D. Tex. 1996) 21, 22

Bentivegna v. U.S. Dep't of Labor, 694 F.2d 619 (9th Cir. 1982) 23

Buck v. Bell, 274 U.S. 200 (1927) 6

Ellison v. Software Spectrum, Inc., 85 F.3d 187 (5th Cir. 1996) 23

Forrisi v. Brown, 794 F.2d 931 (4th Cir. 1986) 22

Fynes v. Weinberger, 677 F. Supp. 315 (E.D. Pa. 1985) 22

Grove City College v. Bell, 465 U.S. 555 (1984) 12

Homeyer v. Stanley Tulchin Assocs., 91 F.3d 959 (7th Cir. 1996) 21

Katz v. City Metal Co., 87 F.3d 26 (1st Cir. 1996) . . . 22

Kocsis v. Multi-Care Management, Inc., 97 F.3d 876 (6th Cir. 1996) 23

Krocka v. Bransfield, 969 F. Supp. 1073 (N.D. Ill. 1997) 27

Matczak v. Frankford Candy & Chocolate Co., 950 F. Supp. 693 (E.D. Pa. 1997) 23

Pushkin v. Univ. of Colorado, 658 F.2d 1372 (10th Cir. 1981) 23

Reynolds v. Brock, 815 F.2d 571 (9th Cir. 1987) 22

Robinson v. Global Marine Drilling, 101 F.3d 35 (5th Cir. 1996) 23

School Board of Nassau County v. Arline, 480 U.S. 273 (1987) 5, 8, 9, 12, 13, 28

Schluter v. Industrial Coils, Inc., 928 F. Supp. 1437 (W.D. Wis. 1996) 23
Webb v. Garelick Mfg. Co., 94 F.3d 484 (8th Cir. 1996) 21

Statutes and Legislative Materials

Americans With Disabilities Act, Pub. L. No. 101-336, 104 Stat. 327 (1990) . . . . . *passim*
Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 241 7
Civil Rights Act of 1968, Pub. L. No. 90-284, 82 Stat. 73 7
Civil Rights Restoration Act, Pub. L. No. 100-259, 102 Stat. 28 (1988) 12
Fair Housing Amendments Act of 1988, Pub. L. No. 100-430, 102 Stat. 1619 . . . . . 9, 14
Federal Social Security Act, 42 U.S.C. § § 401-433 (1994) 11
Pub. L. No. 66-236, 41 Stat. 735 (1920) 6
Rehabilitation Act Amendments of 1974, Pub. L. No. 93-516, 88 Stat. 1617 8
Rehabilitation Act of 1973, Pub. L. No. 93-112, 87 Stat. 355, 394 . . . . . 7, 10
Social Security Act, 42 U.S.C. §§ 1381-1383f 11
Vocational Rehabilitation Act, Pub. L. No. 66-11, 41 Stat. 158 6
29 U.S.C. § 706(8)(B) 11
42 U.S.C. § 1382c(a)(3)(A) 11
42 U.S.C. § 3604(f)(9) 14
42 U.S.C. § 12102(2) 21, 28
42 U.S.C. § 12111(8) 20

42 U.S.C. § 12112(A) 20
42 U.S.C. § 12113(b) 16
42 U.S.C. § 12114 17
42 U.S.C. § 12208 17
42 U.S.C. § 12211(b) 17
S. Rep. No. 93-1297 (1974) 8
S. Rep. No. 100-64 (1987) 12
S. Rep. No. 101-115 (1989) 18
S. Rep. No. 101-116(1989) 29
H. Rep. No. 100-711 (1988) 10, 14
124 Cong. Rec. (1978) 13
134 Cong. Rec. (1988) 13, 14, 16
135 Cong. Rec. (1989) 16, 17
136 Cong. Rec. (1990) 16, 18, 19, 29

Federal Regulations

29 C.F.R. § 1630.2 . . . . . 9, 21
45 C.F.R. § 84.3(j)(2) 9
46 Fed. Reg. 22,677 (1977), *reprinted in* 45 C.F.R. § 84, App. 9
56 Fed. Reg. 40,897 (1991) 19

Other Authorities

Aids Fears Drop in U.S., Poll Shows, Reuters Newswire (Feb. 1, 1996) 27
Gary L. Albrecht, *The Disability Business: Rehabilitation in America* (1992) 6

American Dietetic Association & Canadian Dietetic Association, *Nutrition Intervention In The Care of Persons With Human Immunodeficiency Virus Infection* (1998), *available at* www.eatright.org/ahivinter.html 26
Aric Press, *A Victory for AIDS Victims*, Newsweek, Mar. 16, 1987 12
Robert L. Burgdorf, Jr., *Disability Discrimination In Employment Law* (1995) 10
Scott Burris, *Dental Discrimination Against the HIV-Infected: Empirical Data, Law and Public Policy*, 13 Yale J. on Reg. 1 (1996) 29
Centers for Disease Control and Prevention, Cryptosporidium: *A Guide for Persons with HIV/AIDS* (1998), *available at* www.cdc.gov/nchstp/hiv_aids/pubs/brochure/oi_cryp.html 25
Department of Health and Human Services, *HIV Infection and AIDS: Are You at Risk?*, *available at* www.cdcnac.org/book1.pdf 25
Matthew Diller, *Entitlement and Exclusion: The Role of Disability in the Social Welfare System*, 44 UCLA L. Rev. 361 (1996) 11
Jonathan C. Drimmer, *Cripples, Overcomers, and Civil Rights: Tracing the Evolution of Federal Legislation and Social Policy for People with Disabilities*, 40 UCLA L. Rev. 1341 (1993) 7
EEOC Compliance Manual (CCH) § 902.3 27
8 Fair Empl. Prac. Manual (BNA) No. 641 24

Chai R. Feldblum, *Antidiscrimination Requirements of the ADA, in Implementing the Americans with Disabilities Act* (Lawrence O. Gostin & Henry A. Beyer eds., 1993) 20
Chai R. Feldblum, *Federal Legislation Protecting Civil Rights of People with AIDS, in AIDS and the Courts* (Clark C. Abt & Kathleen M. Hardy eds., 1990) 12
Chai R. Feldblum, *Medical Examinations and Inquiries Under the Americans with Disabilities Act: A View from the Inside*, 64 Temp. L. Rev. 521 (1991) 17, 29
James G. Frierson, *Heads You Lose, Tails You Lose: A Disturbing Judicial Trend in Defining Disability*, Lab. L. J., July 1997, 419 23
Harrison's Principles of Internal Medicine (Isselbacher et al., eds., 13th ed. 1994) 21
Stanley Herr, *Rights and Advocacy for Retarded People* (1983) 5
C.E. Lewis & K. Montgomery, *Primary Care Physicians' Refusal to Care for Patients Infected with the Human Immuno-deficiency*, 156 Western J. Med. 36 (1992) 29
Steven S. Locke, *The Incredible Shrinking Protected Class: Redefining the Scope of Disability Under the Americans with Disabilities Act*, 68 U. Colo. L. Rev. 105 (1997) 23
Paul K. Longmore, *Medical Decision Making and People with Disabilities: A Clash of Cultures*, 23 J. L. Med. & Ethics 82 (1995) . . . 29

National AIDS Fund Survey Finds HIV-Positive Employees May Face Continuing Workplace Discrimination, PR Newswire (Oct. 28, 1997) . . . 27
National Disability Law Reporter, Defining "Disability" Under the ADA: 1997 Update 23
National Institutes of Health, *Report of the NIH Panel to Define Principles of Therapy of HIV Infection* (1997) 23
On the Road Between Euphoria and Failure, Project Inform: Perspective, November 1997 *available at* www.projinfo.org/pub/23/euphoria.html 26
Kim Painter, *People Less Judgmental, Fearful About AIDS*, USA Today, Oct. 9, 1997 27
David Rothman, *The Discovery of the Asylum: Social Order and Disorder in the New Republic* (1971) 5
Richard Scotch, *From Good Will to Civil Rights: Transforming Federal Disability Policy* (1984) . . 6, 7
Rhoda S. Sperling, et al., *Maternal Viral Load, Zidovudine Treatment, and the Risk of Transmission of Human Immunodeficiency Virus Type 1 from Mother to Infant*, 335 New Eng. J. Med. 1621 (1996) 24
United States Commission on Civil Rights, *Accommodating the Spectrum of Individual Abilities* (1983) 5, 6

INTEREST OF THE *AMICI CURIAE*

The *amici curiae*[1] joining this brief — AIDS Action Council, AIDS National Interfaith Network, American Association On Mental Retardation, American Association Of Retired Persons, American Civil Liberties Union, American Council Of The Blind, American Foundation For AIDS Research, American Congress Of Community Supports & Employment Services, AIDS Legal Referral Panel Of The San Francisco Bay Area, American Foundation For The Blind, American Network Of Community Options And Resources, Americans For Democratic Action, Inc., Americans With Disabilities Vote, The Arc Of The United States, Bay Area Lawyers For Individual Freedom, Bazelon Center For Mental Health Law, Blinded Veterans Association, Center For Law In The Public Interest, Center For Women Policy Studies, Children And Adults With Attention Deficit Disorders, Cities Advocating Emergency AIDS Relief Coalition, Coalition For The Homeless, Committee For Children, Disability Rights Council Of Greater Washington, Employment Law Center, Evangelical Lutheran Church In America, Gay And Lesbian Medical Association, Gay Men's Health Crisis, Human Rights Campaign, International Conference On Transgender Law & Employment Policy, Lawyers For Human Rights, Learning Disabilities Association Of America, Legal Action Center, National Association Of People With AIDS, National Association Of Protection And Advocacy Systems, National Association Of Social Workers, Inc., National Center For Lesbian Rights, National Council Of The Churches Of Christ (USA), National Council Of Jewish Women, Inc., National

---

[1] Counsel for the *amici curiae* authored this brief in its entirety. No person or entity, other than the *amici curiae*, its members, or its counsel made a monetary contribution to the preparation or submission of this brief. Letters of consent from all parties have been filed with the Clerk of the Court.

Employment Lawyers Association, National Gay And Lesbian Task Force, National Health Law Program, Inc., National Hemophilia Foundation, National Latino/a Lesbian And Gay Organization, National Lesbian And Gay Health Association, National Lesbian And Gay Law Association, National Minority AIDS Council, National Multiple Sclerosis Society, National Native American AIDS Prevention Center, National Organization On Disability, National Organization For Rare Disorders, Inc., National Parent Network On Disabilities, National Therapeutic Recreation Society, New York Lawyers For The Public Interest, Inc., Nish, Project Inform, RESOLVE, Title II Community AIDS Network, and Union Of American Hebrew Congregations — consist of a range of organizations that represent individuals with disabilities, including HIV infection. A number of the organizations provide direct services and/or advocacy to people with AIDS and HIV infection, a number provide direct services and/or advocacy to people with a range of disabilities, and a number advance the rights of women, youth, older persons, or various ethnic or religious groups. A short description of each of the *amici* appears in the Appendix.

The *amici* share a commitment to eradicating the dehumanizing and debilitating discrimination faced by people with disabilities, many of whom are members of the *amici* organizations. We therefore have a keen interest in the effective implementation of the Americans with Disabilities Act (ADA) through affirmance of the decision below. Moreover, over the past decade, many of the *amici* have worked together to seek congressional passage of legislation addressing the pernicious discrimination faced by people with disabilities, and to oppose efforts to exclude people with HIV from such legislative enactments. Thus, many of us bring to this Court's attention a unique perspective and knowledge of history concerning legislation such as the Civil Rights Restoration Act of 1987, the Fair Housing Amendments Act

of 1988, and, finally, the Americans With Disabilities Act of 1990 — the most important civil rights legislation for people with disabilities. Petitioner offers an interesting, but completely erroneous, account of the political struggle that preceded coverage of people with HIV infection under the ADA. (Pet. Brief at 19-27.) Our organizations were present during the struggle to pass the ADA, and we are acutely aware of how controversial issues were resolved during passage of that law.

Because of the services we provide to people with AIDS and HIV infection and/or people with disabilities generally, and because of the civil rights protection we seek for a range of individuals, *amici* also have a unique understanding of the purpose and role of anti-discrimination laws. We bring to this Court an assessment of how the law can be appropriately implemented to serve its purpose of bringing millions of individuals with disabilities into the mainstream of American life.

SUMMARY OF THE ARGUMENT

Governmental policy towards people with disabilities has evolved during our Nation's history. While people with disabilities were once seen solely as objects of disapproval, pity, or rehabilitation, governmental policy over the past 30 years has reflected a growing commitment to viewing people with disabilities as deserving of a civil right to participate in the mainstream of society.

Under this civil rights model, Congress has established protection for individuals with a range of impairments who experience limitations in society. These limitations may arise directly from physical or mental impairments, or may arise because of societal responses to such impairments. In either case, the definition of "disability" used by Congress has been

precisely drawn to provide civil rights protection to a wide range of individuals with physical and mental impairments — not just to those with "traditional" handicaps.

Because of political realities, Congress has also been forced to confront directly whether people with AIDS and asymptomatic HIV infection should be included in the group of individuals provided civil rights protection. On three separate occasions, Congress had chosen to reaffirm coverage for people with AIDS and HIV infection among the covered group of people with disabilities.

Putting Congressional intent aside, the language used by Congress to define "disability" effectively covers a range of serious physical or mental impairments, including asymptomatic HIV infection. The inherent characteristics of certain impairments eliminate the need for proving, in each individual case, that the impairment limits a particular life activity of that individual. Scientific evidence, and in some cases common sense, tells us that certain impairments almost always substantially limit one or more major life activities. HIV infection falls into such a category. Receiving the news that one is infected with a virus that systematically destroys one's immune defenses from the moment of infection, and will ultimately leave one vulnerable to an untimely death, substantially limits the major life activities of reproduction, sexual intimacy, caring for one's self, interaction with others, and most fundamentally, life itself.

ARGUMENT

I. THE DEFINITION OF DISABILITY UNDER THE AMERICANS WITH DISABILITIES ACT IS INTENTIONALLY BROAD TO ACHIEVE THE CIVIL RIGHTS PURPOSES OF THE LAW.

The Americans with Disabilities Act (ADA) represents a simple yet revolutionary notion: people with disabilities are

part of the mainstream of America, and thus have a civil right to participate in the range of services, benefits, and employment opportunities that make up our society. The definition of a "person with a disability" under the ADA is formulated precisely to achieve inclusion of the full range of individuals who need and deserve such civil rights protection.

Individuals with disabilities who need civil rights protection are not only those who have impairments that give rise directly to specific physical and mental limitations. Rather, many individuals with disabilities are limited because of a complex interplay between the actual limiting aspects of their impairments and the societal limitations that arise because of the responses of others to such impairments. Thus, the definition of "disability" under civil rights laws has been carefully formulated to encompass both sources of limitation.[2]

A civil rights model, with an accompanying broad definition of disability, has not always formed the basis of governmental policy toward people with disabilities. Through much of the 1800s and into the mid-1900s, people with disabilities were seen as useless and dependent, hidden and excluded from society, first in private homes and subsequently in institutions.[3] Governmental policy towards people with disabilities consisted primarily of paying for their care in institutions, and occasionally supporting efforts to reform the institutions. In the late 1800s and early 1900s, the

---

[2] In *School Board of Nassau County v. Arline*, 480 U.S. 273, 284-85 (1987), this Court recognized that people with disabilities face dual sources of limitations.

[3] *See* DAVID ROTHMAN, THE DISCOVERY OF THE ASYLUM: SOCIAL ORDER AND DISORDER IN THE NEW REPUBLIC xiii (1971); UNITED STATES COMMISSION ON CIVIL RIGHTS, ACCOMMODATING THE SPECTRUM OF INDIVIDUAL ABILITIES 17-20 (1983); STANLEY HERR, RIGHTS AND ADVOCACY FOR RETARDED PEOPLE 18-29 (1983).

government tolerated (and even encouraged) a eugenics movement that resulted in the sterilization of hundreds of people with disabilities.[4] Pity, exclusion and shame were the pervasive attitudes toward people with disabilities.

With the return of veterans from the First World War, a governmental policy of vocational rehabilitation for people with disabilities began to supplement the existing approach of pity and exclusion. In 1918, Congress passed the first federal law mandating vocational rehabilitation programs for veterans with disabilities, and two years later, extended such programs to civilians.[5] Over the next fifty years, Congress would continue to expand and support vocational rehabilitation programs for a range of people with disabilities.[6]

The definition of "handicapped individual," which remained virtually unchanged from the Vocational Rehabilitation Act of 1920 until enactment of the Rehabilitation Act of 1973, was tailored to fit the purposes of rehabilitation programs. Thus, a handicapped individual was defined as "any individual who (A) has a physical or mental disability which for such individual constitutes or results in a substantial handicap to employment and (B) can reasonably be

---

[4] *See* ACCOMMODATING THE SPECTRUM, *supra* note 3, at 19-20; RICHARD SCOTCH, FROM GOOD WILL TO CIVIL RIGHTS: TRANSFORMING FEDERAL DISABILITY POLICY 15-17 (1984). *See also Buck v. Bell*, 274 U.S. 200 (1927).

[5] *See* Vocational Rehabilitation Act, Pub. L. No. 66-11, 41 Stat. 158 (1919); Pub. L. No. 66-236, 41 Stat. 735 (1920).

[6] SCOTCH, *supra* note 4, at 19-24; GARY L. ALBRECHT, THE DISABILITY BUSINESS: REHABILITATION IN AMERICA 102-7 (1992).

expected to benefit in terms of employability from vocational rehabilitation services . . ."[7]

During the 1960s, the modern civil rights movements for African-Americans and for women gathered momentum. These movements were premised on the belief that all individuals deserve to be treated equally and with dignity in our society, regardless of their race, gender or religion.[8] During this time, people with disabilities began to demand more autonomy in their lives, starting an "independent living" movement and rejecting the notion that disability equaled dependence.[9]

People with disabilities were not included in the first wave of civil rights legislation.[10] When Congress reauthorized federal rehabilitation programs in 1973, however, it included a provision prohibiting discrimination against a "qualified handicapped individual" on the part of any program or activity that received federal funds.[11] Realizing that its original definition of "handicapped individual" was too narrow to

---

[7] Rehabilitation Act of 1973, Pub. L. No. 93-112, § 7(6), 87 Stat. 355, 361 (1973).

[8] SCOTCH, *supra* note 4, at 24-27.

[9] *Id.* at 34-37; Jonathan C. Drimmer, *Cripples, Overcomers, and Civil Rights: Tracing the Evolution of Federal Legislation and Social Policy for People with Disabilities*, 40 UCLA L. Rev. 1375-85 (1993).

[10] *See* Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 241 (1964); Civil Rights Act of 1968, Pub. L. No. 90-284, 82 Stat. 73 (1968).

[11] Rehabilitation Act of 1973, Pub. L. No. 93-112, § 504, 87 Stat. 355, 394 (1973). *See* SCOTCH, *supra* note 4, at 41-59. This provision is colloquially referred to as "Section 504."

achieve the civil rights goal embodied in Section 504,[12] Congress passed a new definition of "handicapped individual" solely for purposes of Titles IV and V of the Rehabilitation Act:

> [A]ny person who (A) has a physical or mental impairment which substantially limits one or more of such person's major life activities, (B) has a record of such an impairment, or (C) is regarded as having such an impairment.[13]

This new definition of disability reflected Congress' understanding that individuals with a range of physical and mental impairments (and not simply individuals with "traditional" handicaps) often faced discrimination when they sought to participate in society.[14] The definition also recognized that individuals could be "handicapped" either as a result of real physical or mental limitations that flowed from impairments and/or as a result of societal responses to such impairments.[15] Thus, Congress adopted a new, functional definition of handicap — one that extended coverage to individuals based on the range of effects various physical or mental conditions could have on the basic functions of life.

It fell to the Department of Health, Education, and Welfare (HEW) to delineate in regulations how Congress' new functional definition would be applied. HEW's regulations reflected its understanding of the balance Congress had struck

---

[12] *See* statutory definition *supra* note 7 and accompanying text.

[13] Rehabilitation Act Amendments of 1974, Pub. L. No. 93-516, § 111, 88 Stat. 1617 (1974).

[14] *See* S. REP. NO. 93-1297, at 16, 37-38, 50 (1974). *See also Arline*, 480 U.S. at 278-79 (recounting Congressional activity).

[15] *Id.* at 284.

in the new definition of "handicap." Recognizing that Congress had chosen to extend civil rights protection to those with "non-traditional" handicaps, HEW offered examples such as epilepsy, cancer, heart disease, diabetes, and emotional illness as conditions that could be covered, assuming they were serious enough to affect an individual's life activities.[16] At the same time, HEW emphasized that the statutory language of the first prong of the definition precluded coverage of trivial medical conditions as disabilities, such as bruised elbows and common colds, because these impairments were not sufficiently serious to limit such individuals' activities on an ongoing basis.[17]

Congress manifested its recognition of the broad scope of the three-prong definition of "handicap" and "disability" as it began to expand civil rights protection for people with disabilities. In the Fair Housing Amendments Act of 1988, Congress took a significant step forward by extending

---

[16] 45 C.F.R. § 84.3(j)(2)(i)-(ii) (1977). In response to the recommendation that the definition be narrowed so as to cover solely "traditional" handicaps, HEW responded it had "no flexibility within the statutory definition to limit the term to persons who have those severe, permanent, or progressive conditions that are most commonly regarded as handicaps." 46 Fed. Reg. 22,677 (May 4, 1977), *reprinted in* 45 C.F.R. § 84, App. at 333-34 (1997).

[17] The agency also noted that some impairments that might not seem serious — and, indeed, may not be serious at all — would still be covered under the third prong of the definition of disability based solely on the societal limitations arising from such conditions. *See* statutory definition *supra* note 13 and accompanying text. For example, a large birthmark on a cheek is not a serious physical impairment. Nevertheless, the negative attitudes or responses by others towards that impairment (if they result in discriminatory actions) can create coverage for such an individual. *See* 29 C.F.R. § 1630.2(l) (1996); *Arline*, 480 U.S. at 282. *Amici* do not address coverage under the third prong in the instant case, but agree with the analysis set forth by Respondent. *See* Resp. Brief.

protection for people with disabilities in the sale or rental of private housing.[18] In this law, Congress used the same definition of "handicap" as in Section 504, and contemplated that individuals with a similar range of physical and mental impairments would be protected under the law.[19]

Similarly, when Congress enacted the Americans with Disabilities Act (ADA), it used the same definition set forth in Section 504 — this time defining the term "disability."[20] By this point, courts had afforded the protection of Section 504 to individuals with a wide range of impairments, including heart disease, breast cancer, manic depressive illness, dyslexia, multiple sclerosis, and Crohn's disease.[21] Many of these cases were used by Congress to provide examples of the type of discrimination that would be prohibited under the ADA.[22]

Congress has thus deliberately and consistently employed a broad definition of "disability" for purposes of its civil rights statutes. Narrower statutes designed to provide cash

---

[18] Pub. L. No. 100-430, 102 Stat. 1619 (1988). This was the first provision of civil rights protection for people with disabilities outside the scope of recipients of federal funds.

[19] *Id.* § 5(b), 102 Stat. at 1619. *See* H. R. REP. NO. 100-711, at 18 (1988), *reprinted in* 1988 U.S.C.C.A.N. 2173, 2179.

[20] Pub. L. 101-336, § 3(2), 104 Stat. 327, 329 (1990).

[21] *See* ROBERT L. BURGDORF, JR., DISABILITY DISCRIMINATION IN EMPLOYMENT LAW 136-140 (1995) (citing cases).

[22] *See, e.g.*, H.R. REP. NO. 101-485(II), at 65, 71-72 (1990) (citing with approval cases involving dyslexia and HIV infection)).

benefits for those too disabled to work[23] or to establish vocational rehabilitation programs[24] appropriately include definitions of disability narrowly tailored to the purposes of those laws.[25] By contrast, civil rights laws appropriately use an inclusive functional definition of disability. Such a definition is essential if these laws are to achieve their basic goal: ensuring that all individuals with physical or mental disabilities, whether actual, past, or perceived, can participate fully in the mainstream of society.

II. CONGRESS EXPLICITLY REJECTED ATTEMPTS TO EXCLUDE PEOPLE WITH AIDS AND ASYMPTOMATIC HIV INFECTION FROM THE DEFINITION OF DISABILITY.

Although Congress deliberately provided that individuals with a range of physical and mental impairments would receive civil rights protection, specific proposals forced Members of Congress to vote directly on the question of

---

[23] *See, e.g.*, Federal Social Security Act, 42 U.S.C. §§ 401-433 (1994); Social Security Act, 42 U.S.C. §§ 1381-1383f (1994).

[24] Rehabilitation Act, 29 U.S.C. §§ 701-718b (1994).

[25] *See, e.g.*, 42 U.S.C. § 1382c(a)(3)(A) (1994) (Social Security disability benefits) ("unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months"); 29 U.S.C. § 706(8)(B) (1994) (Rehabilitation Act) (definition quoted *supra* note 13 and accompanying text). *See generally* Matthew Diller, *Entitlement and Exclusion: The Role of Disability in the Social Welfare System*, 44 UCLA L. REV. 361 (1996).

whether people with AIDS and asymptomatic HIV infection should be entitled to such coverage as well.[26]

The first Congressional effort to exclude people with AIDS and HIV infection came in response to this Court's decision in *School Board of Nassau County v. Arline,* holding that a woman with tuberculosis was covered under Section 504's definition of handicap.[27] A few months after the decision in *Arline*, a Senate committee began consideration of the Civil Rights Restoration Act of 1987, a bill designed to broaden the meaning of "program or activity" under laws such as Section 504.[28] During committee consideration, Senator Gordon Humphrey offered an amendment to exclude individuals with "contagious diseases" from coverage under Section 504.[29] The explicit goal of the amendment was to overturn this Court's decision in *Arline*.[30]

Senator Humphrey's amendment was defeated by a vote of 2-14.[31] Six months later when the full Senate began

---

[26] For further detail on the proposals described here, *see generally* Chai R. Feldblum, *Federal Legislation Protecting Civil Rights of People with AIDS*, *in* AIDS AND THE COURTS 327 (Clark C. Abt & Kathleen M. Hardy eds., 1990).

[27] 480 U.S. 273. The implications of the *Arline* case for people with AIDS & HIV infection were widely noted in the media. *See* Aric Press, *A Victory for AIDS Victims*, NEWSWEEK, Mar. 16, 1987, at 33.

[28] Pub. L. No. 100-259, § 2, 102 Stat. 28, 28 (1988). *See* S. REP. NO. 100-64, at 4-7 (1987). In *Grove City College v. Bell*, 465 U.S. 555 (1984), this Court had established a limited definition of the term "program or activity."

[29] S. REP. NO. 100-64, at 27-28, 31.

[30] *Id.* at 28.

[31] *Id.* at 27, 31.

consideration of the bill, Senator Humphrey and Senator Tom Harkin, Chair of the Senate Subcommittee on Disability, had reached a compromise. The two Senators jointly offered an amendment patterned directly on the *Arline* decision and a provision that had been added by Congress a decade previously with regard to drug addicts and alcoholics: individuals with contagious diseases or infections who posed a *direct threat* to others would not be covered under Section 504.[32]

The compromise provision specifically included the term "contagious disease *or infection*." The latter phrase was added to include within the ambit of the provision those who were simply infected with a contagious disease — such as those infected with HIV. Indeed, several Members of Congress specifically noted the inclusion of HIV-infected individuals in the provision in stating their acquiescence to it.[33] Those who *opposed* the bill, as amended, also focused on the fact that both people with AIDS and HIV infection would remain covered under Section 504.[34]

---

[32] 134 CONG. REC. 383-84 (1988). *Cf.* 124 CONG. REC. 30,322-33 (1978) (amending definition of handicap for Section 504 with regard to drug addicts and alcoholics).

[33] 134 CONG. REC. 2937-38 (1988) (statement of Rep. Owens); *id.* at 2936-37 (statement of Rep. Weiss); *id.* at 2939 (statement of Rep. Waxman); *id.* at 3043-44 (statement of Rep. Hoyer). Although including this provision was a simple codification of the *Arline* decision, it was a compromise because it added a special statutory provision targeted to people with contagious diseases and infections, within a potentially confusing statutory definition. *See* BURGDORF, *supra* note 21, at 392-398 (noting confusion in court decisions regarding coverage of drug addicts and alcoholics under Section 504).

[34] *See, e.g.*, 134 CONG. REC. 4757 (1988) (statement of Rep. Dannemeyer); *id.* at 4768 (statement of Rep. McEwen).

Shortly after Congress passed the final version of the Civil Rights Restoration Act, it took up the Fair Housing Amendments Act of 1988, which provided civil rights protection for people with disabilities.[35] What followed was an almost identical replay of the debate concerning coverage of people with AIDS and HIV infection. In the House Judiciary Committee, Congressman William Dannemeyer offered an amendment to exclude people with "any infectious, contagious, or communicable disease whether or not such disease causes a physical or mental impairment."[36] As a substitute to that amendment, the Committee added a provision that dwellings need not be made available to an individual "whose tenancy would constitute a direct threat to the health or safety of others."[37]

When the full House of Representatives took up the bill, Congressman Dan Burton offered an amendment providing the term "handicap" does "not include any current infection with the etiologic agent for the acquired immune deficiency syndrome."[38] Congressman Dannemeyer offered an addition to Burton's amendment, providing the term "handicap" would not include "any infectious, contagious, or communicable

---

[35] Pub. L. No. 100-430, § 6, 102 Stat. 1619, 1620 (1988). *See* H.R. REP. NO. 100-711, at 18, *reprinted in* 1988 U.S.C.C.A.N. 2173, 2179 (regarding coverage of people with AIDS and HIV infection). *See also id.* at 22 n.55, 22-24, *reprinted in* 1988 U.S.C.C.A.N. at 2183; 134 CONG. REC. 15,667 (1988) (statement of Rep. Schroeder); *id.* at 15,654-55 (statement of Rep. Weiss); *id.* at 15,862 (statement of Rep. Pelosi); *id.* at 16,478 (statement of Rep. Bryant).

[36] H.R. REP. NO. 100-711, at 28 (1988), *reprinted in* 1988 U.S.C.C.A.N. 2173, 2189.

[37] *Id. See* Pub. L. No. 100-430, § 6(a), 102 Stat. 1619, 1620 (codified as 42 U.S.C. § 3604(f)(9) (1994)).

[38] 134 CONG. REC. 16,496-97 (1988).

disease whether or not such disease causes a physical or mental impairment."[39] Congressman Dannemeyer explained these amendments were necessary to ensure landlords would have the freedom to deny housing to individuals infected with HIV.[40]

During the debate on these two amendments, it was apparent to all participants that people with AIDS, *and people* with *asymptomatic HIV infection*, would continue to be covered under the Act if these amendments failed.[41] Indeed, it was precisely the need to protect both people with AIDS and people with asymptomatic HIV infection that spurred Members of Congress to oppose the two amendments.[42] Several Members of Congress referred to a recent Presidential Commission recommendation urging civil rights protection for individuals with symptomatic and asymptomatic HIV infection, and to Vice President George Bush's endorsement

---

[39] *Id.* at 16,498.

[40] *Id.* ("The amendment I am now offering . . . will say . . . that we do not [include in] the definition of a handicapped person . . . a person with a contagious disease . . . including the virus for AIDS") (statement of Rep. Dannemeyer).

[41] *Id.* at 16,496-504.

[42] *See., e.g., id.* at 16,500 (statement of Rep. Waxman); *id.* at 16,501 (statement of Rep. Owens).

of that recommendation.[43] Both the Burton and Dannemeyer amendments were rejected by the House of Representatives.[44]

By the time Congress took up consideration of the Americans with Disabilities Act (ADA), it was well aware of the debate surrounding anti-discrimination protection for individuals with both AIDS and asymptomatic HIV infection. Following the precedent that was now established, the ADA introduced in May 1989 included at the outset a "direct threat" provision targeted at individuals with contagious diseases or infections.[45]

Many organizations, including many *amici,* anticipated that as in prior years, an amendment might be offered to exclude people with AIDS and HIV infection from coverage under the ADA. Thus, before the Senate considered the ADA, over 50 organizations, representing AIDS, disability, civil rights, and religious groups, sent letters to every Senator

---

[43] *See, e.g., id.* at 16,497 (statement of Rep. Frank); *id.* at 16,498 (statement of Rep. Waxman). *See also* H.R. REP. NO. 101-485(II), at 48 (1990), *reprinted in* 1990 U.S.C.C.A.N. 303, 330.

[44] 134 CONG. REC. 16,504 (1988) (Dannemeyer amendment rejected by vote of 7-89; Burton amendment rejected by vote of 10-84). Congressman Burton offered an identical amendment on a motion to recommit the bill with instructions; that amendment failed by a vote of 63-334. *Id.* at 16,510.

[45] 135 CONG. REC. 8510 (1989); S. REP. NO. 101-116, at 40 (1989). A year later, during consideration of the ADA by the House Committee on the Judiciary, concerns were raised that individuals with mental disabilities might pose a threat to others. The "direct threat" provision was thus amended by that Committee to apply to any individual with a disability. *See* H.R. REP. NO. 101-485(III), at 34 (1990), *reprinted in* 1990 U.S.C.C.A.N. 445, 457; 136 CONG. REC. 11451 (1990) (statement of Rep. Fish). This amended provision was included in the final version of the ADA. 42 U.S.C. § 12113(b) (1994).

urging that the ADA continue to protect "people with AIDS and HIV infection."[46]

In fact, no general attack on coverage of people with AIDS and HIV infection materialized on the Senate floor. While some Senators were displeased with the Act's coverage of such individuals,[47] the only individuals excluded from the ADA were those addicted to drugs,[48] transvestites,[49] and a group with selected mental and sexual disorders.[50]

Petitioner's theory that the "politically controversial" issue of covering people with AIDS and HIV infection was resolved through a negotiated agreement to create conflicting legislative history, *see* Pet. Brief at 19-26, is fanciful and without any basis in reality. While there were many complicated, negotiated issues in the ADA,[51] coverage of people with AIDS and asymptomatic HIV infection was not one of them. By this time, most Members of Congress were comfortable

---

[46] 135 CONG. REC. 19,869-70 (1989). *See also id.* (71 organizations from the Consortium for Citizens with Disabilities urging no "weakening amendments" to the ADA).

[47] *Id.* at 19,864-67, 19,870 (statements of Sen. Helms criticizing coverage of HIV infection under the Act).

[48] 42 U.S.C. § 12114 (1994).

[49] 42 U.S.C. § 12208 (1994). *See* 135 CONG. REC. 19,864 (1989) (colloquy regarding amendment to exclude transvestites from coverage under the Act).

[50] 42 U.S.C. § 12211(b) (1994). *See* 135 CONG. REC. 19,884-85 (1989).

[51] *See generally* Chai R. Feldblum, *Medical Examinations and Inquiries Under the Americans with Disabilities Act: A View from the Inside*, 64 TEMP. L. REV. 521, 523-31 (1991) (detailing negotiations on the ADA).

with coverage of such individuals, and there was no negotiation regarding coverage of AIDS or HIV infection during the entire Senate consideration of the ADA.[52]

A targeted attack on coverage of individuals with AIDS and HIV infection did occur nine months later, when the House of Representatives considered the ADA. But it was not an attack that resulted in a negotiated settlement to include "express endorsements of the HUD regulations." Pet. Br. 25. Rather, it was a broad attack on all people with AIDS and HIV infection who worked in food handling jobs. An amendment was offered by Congressman Jim Chapman allowing an employer "to refuse to assign . . . any employee with an infectious or communicable disease of public health significance to a job involving food handling. . . ."[53] The debate on the amendment reflected an assumption by all Members that, *absent* this amendment, the ADA would continue to cover *asymptomatic HIV-infected* individuals working in food service jobs.[54]

---

[52] In any event, Petitioner's theory of a negotiated compromise makes little sense. There are *no* "handicaps" or "disabilities" listed in the regulations; the only list provided is of impairments. Thus, when Congress wished to indicate that HIV disease (everything from asymptomatic HIV infection to AIDS) was included under the ADA's coverage, the logical place for Congress to have added such a reference was to the list of impairments that already existed in the regulations, together with such conditions as orthopedic, visual and hearing impairments, cancer, and cerebral palsy. To guard against any possible misunderstanding, however, the legislative reports also stated that HIV disease was covered under the first prong of the definition of disability. *See* H.R. REP. NO. 101-485(II), at 52 (1990), *reprinted in* 1990 U.S.C.C.A.N. 303, 334; S. REP. NO. 101-115, at 22 (1989). *See also* H.R. REP. NO. 101-485(III), at 28 n.18 (1990), *reprinted in* 1990 U.S.C.C.A.N. 445, 451 n.18.

[53] 136 CONG. REC. 10,911 (1990).

[54] *Id.* at 10,911-17.

Congressman Chapman's amendment passed by a vote of 199-187 in May 1989.[55] During the following two months, many of the *amici* and others engaged in an extensive effort to educate Congress and to lobby for the removal of this provision from the final version of the ADA. As a result of this effort, any Member of Congress who was not previously aware that the ADA, as currently written, covered people with AIDS and asymptomatic HIV infection, was likely to have been made aware of that fact.[56] *Amici* were pleased with the outcome of that effort, as the final provision adopted in the ADA protected employees with AIDS and HIV infection in food handling jobs, just as they were protected in other positions where they pose no "direct threat" to others.[57]

III. CERTAIN SERIOUS MEDICAL CONDITIONS, INCLUDING ASYMPTOMATIC HIV INFECTION, ALWAYS MEET THE STATUTORY DEFINITION OF A "DISABILITY."

The language Congress used to define disability in the ADA effectively covers a range of serious physical and mental impairments, including asymptomatic HIV infection.

---

[55] *Id.* at 10,917.

[56] *See id.* at 17,046-53 (reprinting letters opposing Chapman amendment.)

[57] *Id.* at 17,033, 17,058 (requiring Surgeon General to issue list of contagious diseases and infections that could be transmitted through food handling). *See* 56 Fed. Reg. 40,897 (1991) (issuance of list without HIV included.)

A. The Inherent Characteristics of Certain Impairments Eliminate Any Need for Proving the Impairment Limits a Particular Individual's Life Activities.

Individualized assessment is central to the ADA's civil rights protection for people with disabilities. The ADA requires that individuals with disabilities be "qualified" for employment positions — that is, they must be able to perform the job's essential functions.[58] The law also requires that, at times, an individual's disability must affirmatively be taken into account and accommodated so that she or he is able to perform a job or receive a benefit.[59] These statutory requirements necessarily assume that an individualized assessment of the abilities and needs of a person with a disability, within the context of a particular job or benefit at issue, will occur in most cases alleging disability-based discrimination.[60]

Deciding if an individual has a disability also requires some form of individualized assessment. The first prong of the definition of "disability" under the ADA extends coverage to individuals who have an impairment that "substantially limits one or more of the major life activities of such

---

[58] 42 U.S.C. § 12111(8) (1994). *See also id.* § 12112(A).

[59] *Id.* § 12112(b)(5); *id.* § 12182(b)(2)(A)(ii)-(iii).

[60] *See* H.R. REP. NO. 101-485(III), at 39 (1990), *reprinted in* 1990 U.S.C.C.A.N. 445, 462; H.R. REP. NO. 101-485(II), at 62 (1990), *reprinted in* 1990 U.S.C.C.A.N. 303, 344. Such individualized assessments ultimately benefit both the individual with the disability and the entity covered under the law. *See* Chai R. Feldblum, *Antidiscrimination Requirements of the ADA*, *in* IMPLEMENTING THE AMERICANS WITH DISABILITIES ACT 35, 35-37 (Lawrence O. Gostin & Henry A. Beyer eds., 1993) (describing "otherwise qualified" and "reasonable accommodation" requirements of the ADA).

individual."[61] In every case, therefore, a plaintiff must show he or she has an impairment as the ADA uses that term. But it does not follow that, in every case, an individual who has an impairment must show that such impairment substantially limits his or her own major life activities.

Some impairments will be disabling for some individuals but not for others. For example, fibromyalgia is an impairment that causes muscle pain.[62] In some, the pain is relatively minor. In others, the pain is so severe that walking, writing, bending and even sitting are substantially limited.[63] Individualized assessments of such impairments are necessary to ensure that individuals with such impairments are given the opportunity to prove they have a covered "disability" under the ADA. *See Homeyer v. Stanley Tulchin Assocs.*, 91 F.3d 959, 962 (7th Cir. 1996) (determination of whether chronic, severe allergic rhinitis and sinusitis substantially limits major life activity of breathing must be made on an individualized basis); *Anderson v. Gus Mayer Boston Store of Delaware*, 924 F. Supp. 763, 774-45 (E.D. Tex. 1996) (impairments that are not inherently limiting must be considered on a case-by-case basis).[64]

---

[61] *See* 42 U.S.C. § 12102(2) (1994). *See also* 29 C.F.R. § 1630.2(g) (1996).

[62] Fibromyalgia is a physical "disorder associated with pain and tenderness of muscle and adjacent connective tissue." Robert C. Griggs, *Muscle Spasms, Cramps and Episodic Contractions*, *in* HARRISON'S PRINCIPLES OF INTERNAL MEDICINE 130, 131-32 (Isselbacher et al., eds., 13th ed. 1994) (HARRISON'S).

[63] Bruce Gilliland, *Relapsing Polychondritis and Miscellaneous Arthritides*, in HARRISON'S at 1706-07.

[64] Several courts have inappropriately framed the individualized assessment in cases of this kind as whether the "impairment constitutes for the particular person a significant barrier to *employment*." *Webb v.*

But it would make no sense to require individuals with other impairments — such as a complete lack of sight or legs that have been amputated — to prove that those impairments interfere with their individual lives. Science and common sense tell us that impairments that deprive an individual of the ability to see or to walk always will substantially interfere with major life activities. Nothing in the language or structure of the ADA requires courts to demand proof of the obvious. Disabilities that always substantially limit major life activities are what the courts mean by "per se" disabilities. *Anderson*, 924 F. Supp. at 774-775.

Applying the statutory definition of disability in this manner appropriately ensures that a significant number of individuals will be eligible for coverage under the ADA without unnecessary evidentiary burdens. Such a result is consistent with the intent of Congress and with the statutory language it employed. If courts are faced with unfounded claims of disability discrimination, such claims should be decided against the plaintiffs on the *merits* of the case, and not through inappropriate exclusion from the protected class.[65]

Garelick Mfg. Co., 94 F.3d 484, 488 (8th Cir. 1996), *quoting Forrisi v. Brown*, 794 F.2d 931, 933 (4th Cir. 1986) (emphasis added). While such an evaluation is appropriate in those rare cases where a plaintiff's impairment substantially limits *solely* the life activity of *working*, it is inappropriate where the impairment limits other life activities like concentrating, bending, or stooping. In such cases, the assessment must focus on those activities, and not on employability in general. *See* 29 C.F.R. § 1630, App. at 340 (1996). *See also Katz v. City Metal Co.*, 87 F.3d 26 (1st Cir. 1996) (correcting district court on this point).

[65] Some courts have responded to unfounded claims of disability discrimination by twisting the definition of disability almost beyond recognition. This has resulted in a body of law at odds with the Section 504 case law on which Congress relied in passing the ADA. *Compare Reynolds v. Brock*, 815 F.2d 571, 574 (9th Cir. 1987) (plaintiff with epilepsy is person with disability under § 504); *Fynes v. Weinberger*, 677

B. HIV Infection Is Always a Disability Under the ADA Because Its Inherent Characteristics Substantially Limit One or More Major Life Activities.

All individuals with asymptomatic HIV infection have a physical impairment[66] that substantially limits one or more of their major life activities. HIV substantially limits

---

F. Supp. 315, 321 (E.D. Pa. 1985) (plaintiff with asbestosis is person with disability under § 504); *Bentivegna v. U.S. Dep't of Labor*, 694 F.2d 619, 621 (9th Cir. 1982) (insulin-dependent diabetic is person with disability under § 504); *Pushkin v. Univ. of Colorado*, 658 F.2d 1372, 1376 (10th Cir. 1981) (plaintiff with multiple sclerosis is person with disability under § 504) *with Matczak v. Frankford Candy & Chocolate Co.*, 950 F. Supp. 693, 696 (E.D. Pa. 1997) (plaintiff with epilepsy not person with disability under ADA); *Ellison v. Software Spectrum, Inc.*, 85 F.3d 187, 191 (5th Cir. 1996) (plaintiff with breast cancer not person with disability under ADA); *Kocsis v. Multi-Care Management, Inc.*, 97 F.3d 876, 884 (6th Cir. 1996) (plaintiff with multiple sclerosis not person with disability under ADA); *Schluter v. Industrial Coils, Inc.*, 928 F. Supp. 1437, 1445-46 (W.D. Wis. 1996) (insulin-dependent diabetic not person with disability under ADA). An adverse effect of such rulings is that other plaintiffs with similar disabilities who have colorable claims of discrimination have been denied the ability to seek relief under the ADA. *See, e.g., Robinson v. Global Marine Drilling*, 101 F.3d 35 (5th Cir. 1996) (jury verdict for plaintiff with asbestosis resulting in 50% lung capacity reversed on grounds that asbestosis not a disability under ADA). *See generally* Steven S. Locke, *The Incredible Shrinking Protected Class: Redefining the Scope of Disability Under the Americans with Disabilities Act*, 68 U. COLO. L. REV. 105 (1997); NATIONAL DISABILITY LAW REPORTER, DEFINING "DISABILITY" UNDER THE ADA: 1997 UPDATE ii (1997); James G. Frierson, *Heads You Lose, Tails You Lose: A Disturbing Judicial Trend in Defining Disability*, LAB. L. J., July 1997, 419.

[66] Infection with HIV inflicts chronic damage to immune system cells that circulate in the blood and to lymphoid organs throughout the body. NATIONAL INSTITUTES OF HEALTH, REPORT OF THE NIH PANEL TO DEFINE PRINCIPLES OF THERAPY OF HIV INFECTION 4 (1997).

reproduction, sexual intimacy, caring for one's self, interactions with others, and most fundamentally, life itself.

Individuals with HIV infection are necessarily limited in the major life activity of reproduction.[67] Any attempt to conceive a child puts the partner of an individual with HIV at risk of becoming infected. Successful conception carries the risk of a child born with HIV.[68] Those risks may not convince every individual with HIV to forgo reproduction entirely. But for every individual with HIV infection, the "conditions . . . under which" the decision about whether to engage in procreative activity, and the process of bearing a child for those who do, will be far different from that of the average person.[69]

---

[67] Respondent correctly notes that reproduction is a major life activity. *See* Resp. Brief. The memorandum of law issued by the Department of Justice in 1988 which identified reproduction as a major life activity, *see* Memorandum from Douglas W. Kmiec, Acting Asst. Att'y Gen., Office of Legal Counsel, to Arthur B. Culvahouse, Jr., Counsel to the President (Sept. 27, 1988), *reprinted in* 8 Fair Empl. Prac. Manual (BNA) No. 641 at 405: 4-7, and Congress' numerous references to this memo, *see, e.g.*, *Americans with Disabilities Act of 1989: Hearings on S. 933 Before the Comm. on Labor and Human Resources and the Subcomm. on the Handicapped*, 101st Cong., 1st Sess. (1980), *reprinted in* A&P Hearings S.933 at *118, are consistent with a common-sense understanding that reproduction is, indeed, a major life activity.

[68] Rhoda S. Sperling, et al., *Maternal Viral Load, Zidovudine Treatment, and the Risk of Transmission of Human Immunodeficiency Virus Type 1 from Mother to Infant*, 335 NEW ENG. J. MED. 1621 (1996) (noting rates of transmission from treated (7.6%) and untreated (22.6%) HIV infected mothers to infants).

[69] *See* 28 C.F.R. Pt. 36, App. at 610-11 (1996) (a person is substantially limited "when the individual's important life activities are restricted as to the conditions, manner, or duration under which they can be performed in comparison to most people.").

All individuals with HIV infection are also limited in the major life activity of intimate sexuality.[70] Some individuals may forgo sexual activity entirely, most will significantly alter the nature of their intimate acts, but for everyone, intimacy will carry conditions of potential risk to the sexual partner that are significantly different from those experienced by the average individual.[71]

At the most basic level, receiving the news that one is infected with a virus that systematically destroys one's immune defenses from the moment of infection, and will ultimately leave one vulnerable to an untimely death, dramatically affects the way one cares for oneself[72] and many other fundamental aspects of the way one lives one's life.

Virtually everything involved in caring for oneself day to day, from the profound to the trivial, is altered forever by an HIV diagnosis. A few nights of insomnia become cause for serious concern. A soda at lunch filled with ice cubes made from tap water becomes a deadly threat.[73] A person with

---

[70] Like reproduction, intimate sexual activity is also a major life activity. *See* Memorandum from Douglas W. Kmiec, *supra* note 67. *See also* Resp. Brief.

[71] *See generally* DEPARTMENT OF HEALTH AND HUMAN SERVICES, HIV INFECTION AND AIDS: ARE YOU AT RISK?, *available at* www.cdcnac.org/book1.pdf.

[72] *See* 29 C.F.R. Pt. 1630, App. at 339 (listing caring for one's self as a major life activity).

[73] The CDC recommends that people with HIV infection not drink untreated tap water, because it frequently contains the potentially deadly bacteria cryptosporidium. CENTERS FOR DISEASE CONTROL AND PREVENTION, CRYPTOSPORIDIUM: A GUIDE FOR PERSONS WITH HIV/AIDS 2 (1998), *available at* www.cdc.gov/nchstp/hiv_aids/pubs/brochure/oi_cryp.html.

HIV must be attentive to diet or stress that might trigger immune suppression.[74] A person with HIV must be wary about changing careers for fear that a new health plan may leave him or her destitute in a few years. Life involves a series of decisions, including those that are large for everyone — what career to choose, what schooling to pursue, where to live, and whether to start a family — and those that, although small for the average person, have a greater impact for the person with HIV — what and when to eat, or which gynecologist or primary care physician to choose.[75] The prospect of a series of debilitating illnesses and an untimely death means that people with HIV will make every one of these decisions, and a host of others, under a different set of conditions from those experienced by the average person.[76]

As if transforming the most mundane aspects of daily living into potential threats to life itself were not enough, people who are HIV infected must adjust their lives to cope with the fear, stigma and prejudice of those around them.

---

[74] *See* AMERICAN DIETETIC ASSOCIATION & CANADIAN DIETETIC ASSOCIATION, NUTRITION INTERVENTION IN THE CARE OF PERSONS WITH HUMAN IMMUNODEFICIENCY VIRUS INFECTION (1998), *available at* www.eatright.org/ahivinter.html.

[75] Obviously, a key determinant in making decisions is income level. But while poor and low-income HIV infected individuals will be faced with a different set of decisions than middle and upper-income HIV infected individuals, the decision-making of all such individuals will be significantly affected.

[76] Despite the advances made in drug treatments for HIV infection, "[e]veryone must understand that AIDS is not cured, not one person has seen his or her virus 'eradicated,' and the fight is bound to go on for years." *On the Road Between Euphoria and Failure*, PROJECT INFORM: PERSPECTIVE, November 1997, at 1, 3, *available at* www.projinfo.org/pub/23/euphoria.html. *See also* Brief of *Amicus Curiae* American Medical Association.

Despite all the scientific evidence to the contrary, many individuals still believe HIV is casually transmissible and that the very presence of those who have it is a threat.[77] Many believe those who have HIV are morally corrupt.[78] And many people simply do not want to be around people with HIV — not in the workplace, not in restaurants and bars, not anywhere.[79] An HIV diagnosis carries with it the certain knowledge that no one will look at you quite the same way again, that you may be in danger of losing your friends and your family, and that the attitudes of many will pose serious threats to your ability to survive with the disease — to keep your job and your insurance and to get essential medical care (whether or not related to HIV). That knowledge profoundly affects the way people with HIV interact with others,[80] making them circumspect about sharing what is now a central

---

[77] A 1996 poll found that 17% of those polled feared they might become infected with HIV through casual contact, down from 29% in 1991. *Aids Fears Drop in U.S., Poll Shows*, REUTERS NEWSWIRE (Feb. 1, 1996). Another poll found that two-thirds of employees felt their co-workers would be uncomfortable around people infected with HIV, and 21% would favor firing or restricting such an employee. *National AIDS Fund Survey Finds HIV-Positive Employees May Face Continuing Workplace Discrimination*, PR NEWSWIRE (Oct. 28, 1997).

[78] A 1997 poll found that 31% of people thought that AIDS was a punishment for a decline in moral standards, and 40% believed it was the infected individual's own fault. Kim Painter, *People Less Judgmental, Fearful About AIDS*, USA TODAY, Oct. 9, 1997, at 10D (numbers of people condemning those with HIV down slightly since 1987).

[79] *See id.* (seven percent of people believe those with AIDS should be isolated from society); *National AIDS Fund Survey*, *supra* note 77.

[80] *See* EEOC Compliance Manual (CCH) § 902.3 (listing interacting with others as a major life activity); *Krocka v. Bransfield*, 969 F. Supp. 1073, 1083 (N.D. Ill. 1997) (recognizing interacting with others as major life activity).

part of their lives, hypersensitive to the collection and handling of medical information, and justly wary about how even casual remarks might shatter their lives.[81]

One need not know how asymptomatic HIV infection, symptomatic HIV infection, or AIDS itself has affected a particular individual's life to know that these impairments have substantially limited a major life activity. HIV infection will always do that, and thus, is "per se" a disability under the ADA.

IV. COURTS SHOULD NOT DEFER TO INDIVIDUAL HEALTH CARE PROVIDERS IN DETERMINING ISSUES OF "DIRECT THREAT."

Amici agree with Respondent that in determining whether a person with a disability poses a "direct threat" to health care providers, courts should not defer to the individual judgments of such providers. Such deference would subvert the balance that has been struck in disability anti-discrimination laws with regard to individuals with contagious diseases; under this balance, people with disabilities are protected from discrimination based on unfounded fears, and entities covered under the law are protected against actual threats to their health and safety.[82]

Amici wish only to emphasize to this Court the serious problem people with HIV infection, and people with disabilities generally, face in receiving quality health care in this country. While thousands of medical professionals serve people with disabilities every day with fairness, dignity, and

---

[81] When stigma, fear and prejudice actually drive specific acts of discrimination, the ADA covers such discrimination under the "regarded as" prong of the definition of disability. *See* 42 U.S.C. § 12102(2)(C) (1994).

[82] *See Arline*, 480 U.S. at 287.

respect, those qualities are not present in all interactions with health care professionals.[83] Indeed, it is precisely because people with disabilities have experienced discriminatory treatment at the hands of the health care profession that the ADA's coverage of health care providers was of key importance to many *amici* and others during passage of the ADA.[84]

Amici also wish to emphasize the narrowness of the question before the Court. This case does not present the question of what deference should be given to medical providers who are making treatment decisions ostensibly in the "best interests" of their patients. Such questions are themselves complex because such decisions on the part of health care providers are often based on false assumptions about disability.[85] This case, by contrast, concerns solely what deference to afford health care providers who make decisions about risks that may accrue to *them* if they treat

---

[83] *See* C. E. Lewis & K. Montgomery, *Primary Care Physicians' Refusal to Care for Patients Infected with the Human Immunodeficiency Virus*, 156 W. J. MED. 36 (1992) (48% of primary care physicians surveyed said they would not care for patients with HIV infection). *See also* Scott Burris, *Dental Discrimination Against the HIV-Infected: Empirical Data, Law and Public Policy*, 13 YALE J. ON REG. 1 (1996); Paul K. Longmore, *Medical Decision Making and People with Disabilities: A Clash of Cultures*, 23 J. L. MED. & ETHICS 82 (1995).

[84] *See* Feldblum, *supra* note 51, at 58 (noting final compromise in the Senate which resulted in broad coverage of public accommodations). *See also* S. REP. NO. 110-116, at 8 (quoting United States Commission on Civil Rights finding of discrimination in medical treatment); 136 CONG. REC. 17293 (statement of Rep. Waxman) (noting protection under ADA against discrimination by doctors).

[85] *See* Longmore, *supra* note 83, at 84-85. For this reason, *amici* urge the Court to avoid making any broad statements regarding deference to decisions by medical providers on treatment options.

patients with certain disabilities. In situations of this kind, deference to the judgment of the individual health provider is particularly unwarranted.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted,

Steven R. Shapiro
Jennifer Middleton
Matthew Coles
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
125 Broad Street
New York, New York 10004
(212) 549-2600

Chai R. Feldblum
Counsel of Record
Associate Professor of Law
Federal Legislation Clinic
GEORGETOWN UNIVERSITY LAW CENTER
600 New Jersey Ave., N.W.
Washington, D.C. 20001
(202) 662-9595

Of Counsel:
Robert A. Long, Jr.
Alexandra T.V. Edsall
Grail P. Walsh
COVINGTON & BURLING
1201 Pennsylvania Ave., N.W.
P.O. Box 7566
Washington, D.C. 20044
(202) 662-6000

February 1998 *Counsel for Amici Curiae*

APPENDIX

DESCRIPTIONS OF AMICI CURIAE

The AIDS Action Council ("AIDS Action") is the Washington, D.C. representative of over 2,400 community-based organizations and the one million HIV-infected individuals they serve. Since 1984, AIDS Action, the only national organization devoted entirely to federal advocacy on behalf of people living with HIV/AIDS, has worked for the development and implementation of federal initiatives to effectively address the needs of people living with HIV/AIDS. In this regard, AIDS Action was instrumental in the passage of the Americans with Disabilities Act ("ADA") in 1990.

The AIDS National Interfaith Network ("ANIN") is a non-sectarian, private non-profit organization founded in 1988. ANIN collaborates with a network of nearly 2,000 AIDS ministries across the United States. ANIN supports community-based AIDS ministries, educates AIDS service organizations, the religious community at large and the general public. ANIN's programs include networking/collaboration and referral activities as well as public education and federal AIDS policy advocacy.

The American Association on Mental Retardation ("AAMR") is the nation's oldest and largest interdisciplinary organization of professionals who work with people with mental retardation and other developmental disabilities in both institutional and community settings. AAMR develops human resources and leadership, promotes high quality services and supports that enable full community inclusion and participation, encourages research and its dissemination and application, advocates for progressive public policies, and influences public awareness and attitudes. The mission of the AAMR is to enhance the opportunities, human rights and choices of people with mental retardation and their families by

exchanging information that advances the skills and knowledge of individuals in the field.

The American Association of Retired Persons ("AARP") is a nonprofit membership organization of more than 30 million persons, age 50 and older. More than one-third of AARP's members are employed and many of them have disabilities. As the leading advocate for the rights of older workers, AARP is interested in insuring that the definition of disability is interpreted broadly to guarantee that the ADA fulfills the purposes that Congress intended.

The American Civil Liberties Union ("ACLU") is a nationwide, nonprofit, nonpartisan organization with nearly 300,000 members dedicated to preserving the principles of liberty and equality embodied in the Constitution. Since its founding in 1920, the ACLU has participated in numerous cases before this Court. Through its AIDS/HIV Project and its state affiliates, the ACLU Foundation engages in extensive advocacy and litigation to protect people with HIV, AIDS, and other disabilities from discrimination, working on more HIV-related litigation and legislation than any other legal organization. The ACLU AIDS Project was also a key participant in efforts to pass the ADA.

The American Council of the Blind ("ACB") is a national membership organization of people who are blind or visually impaired, with 69 affiliate organizations and 50,000 members nationwide. ACB strives to maximize the social, economic and cultural opportunities of all blind and visually impaired people by advocating for the improvement of educational and rehabilitation opportunities, services and facilities, building partnerships with public and private entities concerned with services for people who are blind, encouraging and assisting all blind persons to develop their abilities to the fullest extent possible, and promoting greater understanding of blindness and the capabilities of blind people.

The American Foundation for AIDS Research ("AmFAR") is the nation's leading nonprofit organization dedicated to the support of AIDS research (both basic-biomedical and clinical research), AIDS prevention, and the advocacy of sound AIDS-related public policy. Since 1985, AmFAR has invested more than $144 million in support for its programs, primarily through grants to more than 1,700 research teams.

The American Congress of Community Supports and Employment Services ("ACCSES") is a national not-for-profit organization representing more than 700 employment and community supports services providers nationwide. ACCSES is dedicated to improving employment opportunities, community services and residential options for the thousands of people with disabilities served by its members.

Since 1983, the AIDS Legal Referral Panel of the San Francisco Bay Area ("ALRP") has provided legal services to people with HIV or HIV-related legal problems in employment, healthcare, discrimination, shelter, and other areas. ALRP also protects and advances the civil rights — including workplace rights — of people with HIV through public policy advocacy.

The American Foundation for the Blind's ("AFB") mission is to enable persons who are blind or visually impaired to achieve equality of access and opportunity that will ensure freedom of choice in their lives. AFB accomplishes this mission by taking a national leadership role in the development and implementation of public policy and legislation, informational and educational programs, and quality services.

The American Network of Community Options and Resources ("ANCOR") is a national organization that represents and assists about 650 private agencies nationwide who together offer services and supports to more than 150,000 people with disabilities and their families. ANCOR provides

leadership in the development and provision of innovative, high quality supports in the community.

Americans for Democratic Action, Inc. ("ADA," for purposes of this paragraph only) is an independent liberal political organization, founded in 1947, dedicated to promoting individual liberty and economic justice. ADA publishes a weekly legislative newsletter for liberal activists, a quarterly newsletter, special reports, including an annual voting record report that ranks Members of Congress according to a liberal quotient, based on a full spectrum of domestic and international policy issues. In addition to its legislative advocacy, ADA maintains a political action committee to support liberal candidates for Congress. ADA also engages in independent campaign activity in support of Presidential candidates.

Americans With Disabilities Vote is a nonpartisan, nonprofit organization whose mission is to encourage citizens with disabilities to register, vote and participate in the political process.

The Arc of the United States, a national organization on mental retardation, is an open membership organization made up of people with mental retardation and their families, friends, interested citizens, and professionals in the disability field. With 140,000 members in 1,100 state and local chapters nationwide, The Arc is the largest voluntary organization devoted solely to working on behalf of the estimated seven million people with mental retardation in the United States and their families. The Arc has been intensely involved in pursuing federal legislation which supports the rights of people with mental retardation, including enactment of the ADA.

Bay Area Lawyers for Individual Freedom ("BALIF") is a minority bar association comprised of over 500 gay, lesbian and bisexual members of the San Francisco Bay Area legal community. BALIF promotes the professional interests of its

members and the legal interests of the gay, lesbian and bisexual community at large, by participating in public policy debates concerning the rights of lesbians, gay men and bisexuals, including persons living with HIV. BALIF co-founded the San Francisco-based AIDS Legal Referral Panel to provide free legal assistance to persons living with HIV, now serving more than 3,000 clients annually.

The Bazelon Center for Mental Health Law is a national legal advocacy organization representing people with mental disabilities. The Bazelon Center seeks the full integration into the community of people with mental disabilities by protecting their rights to choice and dignity and expanding their access to housing, employment and other services, including medical and dental care.

The Blinded Veterans Association, a nonprofit and tax-exempt organization, was founded in 1945 by a group of veterans blinded during World War II. The Association was incorporated in 1947, and in 1958 was chartered by the United States Congress to represent all blinded veterans.

The Center for Law in the Public Interest is a 26-year-old, non-profit law firm specializing in impact litigation, policy-oriented research, counseling and legislative advocacy, primarily in the areas of civil rights, consumer protection and environmental/land use law. Since the passage of the ADA, the Center has litigated many cases under the Act, and has established an anti-discrimination project devoted toward providing effective representation to persons with HIV.

The Center for Women Policy Studies ("CWPS"), founded in 1972, is a national nonprofit, multiethnic and multicultural, feminist policy research and advocacy institution. The National Resource Center on Women and AIDS policy, founded in 1987 by CWPS, is a leader in conducting original research and addressing critical AIDS policy issues from women's diverse perspectives. CWPS has produced more than

20 research, advocacy and policy reports, including discussions of the disabling health conditions faced by women who do not fall under the surveillance and Social Security Administration definitions of AIDS.

Children and Adults with Attention Deficit Disorders ("CH.A.D.D.") is a non-profit, parent-based organization formed in 1987 to better the lives of individuals with ADD and those that care for them. Through family support and advocacy, public and professional education and encouragement of scientific research, CH.A.D.D. works to ensure that individuals with ADD reach their inherent potential. Based in Plantation, Florida, CH.A.D.D. has over 30,000 members and 520 chapters nationwide.

The Cities Advocating Emergency AIDS Relief Coalition ("CAEAR Coalition") is a national grassroots nonprofit organization that advocates for increased funding for the Ryan White CARE Act with a special focus on Titles I and III. The CAEAR Coalition is a membership organization involving people living with HIV/AIDS, community-based organizations, and Planning Councils and grantees under Title I and Title III of the Ryan White CARE Act.

The Coalition For The Homeless was founded in 1980 on the principle that decent shelter, sufficient food, and affordable housing are fundamental rights in a civilized society. The Coalition educates, advocates for and provides direct services to homeless persons. The Coalition's Scattered Site Housing Programs provides decent apartments, personal support, and vital services to homeless people living with AIDS.

The Committee For Children is a national child advocacy organization that works for the safety, health, welfare and protection of all children, both in the United States and where possible abroad.

The Disability Rights Council of Greater Washington ("DRC"), established in 1992 as a regional advocacy organization, is organized to address systemic discrimination against people with disabilities in every aspect of society. The DRC's goal is to promote, secure and protect the full participation of people with disabilities in the community, which the DRC believes will strengthen society as a whole.

The Employment Law Center ("ELC") is a project of the Legal Aid Society of San Francisco, a private, non-profit organization. The primary goal of the Center is to improve the working lives of disadvantaged people. Since 1970, ELC has represented clients in cases covering a broad range of employment-related issues including discrimination on the basis of race, gender, age, disability, pregnancy, citizenship, sexual orientation and national origin. In addition, ELC has been involved with issues such as occupational health and safety, language rights and the characterization of employees as independent contractors. ELC has represented clients faced with discrimination on the basis of their disability, including those with HIV/AIDS. ELC monitors state and federal rulings of importance to disabled persons. In addition, it files amicus briefs in cases raising issues concerning the interpretation and enforcement of the ADA.

The Evangelical Lutheran Church in America ("ELCA") is the largest Lutheran denomination in North America and the fifth largest Protestant church body in the United States. The ELCA has approximately 11,000 member congregations, which in turn have approximately 5.2 million individual members nationwide. Through the Lutheran Office of Governmental Affairs in Washington, D.C., the ELCA engages in advocacy on public policy issues before the Congress of the United States of America.

The Gay and Lesbian Medical Association ("GLMA") is an organization of nearly 2,000 lesbian, gay, bisexual, and

transgendered physicians, medical students, and their supporters in all 50 states and 12 countries. Founded in 1981, GLMA works to combat homophobia within the medical profession and in society at large, and to promote quality health care for lesbian, gay, bisexual, and transgendered patients.

The Gay Men's Health Crisis is the world's oldest and largest not-for-profit AIDS organization, providing services to people with AIDS and their loved ones, educating the public, and advocating for fair and effective AIDS policies.

The Human Rights Campaign ("HRC") is the nation's largest gay and lesbian civil rights organization. HRC is devoted to fighting and ending discrimination against gay men and lesbians, and to protecting the basic civil and human rights of those Americans. HRC is also specifically devoted to fighting discrimination against people living with HIV and AIDS. To these ends, HRC has provided federal advocacy and media and grassroots support on a range of legislative initiatives affecting gay men, lesbians, and people living with HIV/AIDS, including the ADA and the Employment Nondiscrimination Act.

The International Conference on Transgender Law and Employment Policy ("ICTLEP") was founded in 1992 to undertake educational activities relating to laws affecting transgenders, to develop changes to provide relief from discriminatory legislation affecting transgenders, and to educate the general public and the legal profession about special problems unique to transgenders. ICTLEP is also concerned with how law affects those transgenders who contract AIDS and is interested in how AIDS law affects all people who similarly suffer from the disease and from the discrimination which accompanies it.

Lawyers for Human Rights – The Lesbian and Gay Bar Association of Los Angeles ("LHR"), an affiliate of the Los

Angeles County Bar Association organized in 1979, is a mutual support network for lesbian, gay, and bisexual lawyers, law students and legal workers in the Los Angeles area. LHR's mission includes the provision of a strong leadership presence of and for lesbian, gay and bisexual persons in the legal profession and in the community at large, through education, legal advocacy, and participation in political and civil activities.

The Learning Disabilities Association of America ("LDA") is a national, nonprofit, volunteer organization including individuals with learning disabilities, their families, and professionals. LDA is dedicated to enhancing the quality of life for all individuals with learning disabilities and their families, to alleviating the restricting effects of learning disabilities, and to supporting endeavors to determine the causes of learning disabilities. LDA seeks to accomplish this through advocacy, education, research and service and through collaborative efforts

The Legal Action Center is a nonprofit law and policy organization specializing in AIDS, alcohol, and drug issues. The Center's attorneys, who helped draft the ADA protections at stake in this case, represent individuals with HIV disease and the programs that serve them to resolve discriminatory practices in employment, housing, health care, zoning and other areas of life.

The National Association of People with AIDS ("NAPWA"), founded in 1983, advocates on behalf of all people living with HIV and AIDS in order to end the pandemic and the human suffering caused by HIV/AIDS.

The National Association of Protection and Advocacy Systems ("NAPAS"), which was founded in 1981, is a membership organization for the nationwide system of protection and advocacy ("P&A") agencies. P&As are mandated under the Developmental Disabilities Assistance and

Bill of Rights Act, 42 U.S.C. 6000 *et seq.*, the Protection and Advocacy for Mentally Ill Individuals Act, 42 U.S.C. 10801 *et seq.*, and the Protection and Advocacy for Individual Rights Program, 29 U.S.C. 794e, to provide legal representation and related advocacy services on behalf of all persons with disabilities. In fiscal year 1996, P&As served over 1,000,000 people with disabilities through a variety of mechanisms: individual case representation, systemic advocacy, information and referral and education efforts. NAPAS facilitates the coordination of P&A activities, provides P&As with training and technical assistance and represents their interests before the Executive and Legislative Branches of Government.

The National Association of Social Workers, Inc. ("NASW"), a nonprofit professional association with over 155,000 members and chapters in each state and internationally, is the largest association of social workers in the world. The Maine Chapter of NASW is an affiliated chapter located in the state in which this action arose. NASW is devoted to promoting the quality and effectiveness of social work practice, to advancing the knowledge base of the social work profession, and to improving the quality of life for all people. NASW has issued a policy statement on HIV/AIDS and is committed to ensuring that people with HIV/AIDS receive the benefit and protection of federal laws protecting persons with perceived or actual disability.

The National Center for Lesbian Rights ("NCLR"), founded in 1977, is a national legal and advocacy organization dedicated to achieving full civil and human rights for all lesbians and their families. NCLR provides litigation, legal resources, advocacy and community education services to lesbians and their families. Also, by appearing in prominent national media, NCLR is dedicated to bringing lesbian civil rights to the forefront of the American consciousness in an accessible and compelling manner.

The National Council of the Churches of Christ ("NCC") in the USA is the nation's oldest and largest ecumenical body. Its members are 34 Protestant, Anglican and Orthodox communions with an aggregate membership in excess of 50 million. The NCC does not purport to speak for all of its members but rather for its general assembly which includes representatives of each member communion.

The National Council of Jewish Women, Inc. ("NCJW") is a volunteer organization, inspired by Jewish values, that works through a program of research, education, advocacy an community service to improve the quality of life for women, children and families, and strives to ensure individual rights and freedoms for all. Founded in 1893, NCJW has 90,000 members in over 500 communities nationwide. NCJW has a historical commitment to civil rights issues and was actively involved in passage of the ADA.

The National Employment Lawyers Association ("NELA") is a voluntary membership organization of over 3,000 lawyers who regularly represent employees in labor, employment, and civil rights disputes. NELA is one of the largest organizations in the United States whose members litigate and counsel individuals, employees, and applicants on claims arising out of the workplace. One of the primary purposes of NELA is to represent, protect, and defend the interests of employees involved in workplace disputes, including workers who are involved in litigation under the ADA.

The National Gay and Lesbian Task Force ("NGLTF") works to eliminate prejudice, violence and injustice against gay, lesbian, bisexual and transgendered people at the local, state and national levels. As part of a broader social justice movement for freedom, justice and equality, NGLTF is creating a world that respects and celebrates the diversity of human expression and identity and where all people may fully participate in society.

The National Health Law Program is a public interest law firm that works with legal advocates and others to improve access to health care by low-income people through policy analysis, advocacy and litigation.

The National Hemophilia Foundation ("NHF") seeks to enhance the quality of life and promote the health of people with hemophilia, von willebrand disease, and other bleeding disorders. With 43 chapters nationwide, NHF supports clinical research and provides education to professionals, the bleeding disorders community, and the general public. NHF also delivers patient and community services, advocates on behalf of the bleeding disorders community, and makes health policy recommendations. NHF addresses treatment issues, HIV, and related health problems and offers a range of information services and publications through its information center (HANDI).

The National Latino/a Lesbian and Gay Organization ("LLEGO") was established in 1987 to strengthen Latina Lesbian, Latino Gay, bisexual and transgender communities at local, national and international levels by facilitating access to cultural, political, and community development resources. LLEGO is a constituency based organization with over one hundred affiliates nationwide in 47 cities, 18 states and Puerto Rico.

The National Lesbian and Gay Health Association ("NLGHA") is a nonprofit 501(c)(3) organization of individual health care professionals, clinics and programs that provide primary health care focusing on the needs of lesbians and gay men. The mission of NLGHA is to enhance the quality of health and health care for lesbians and gay men through education, policy development, advocacy, and the facilitation of health care delivery.

The National Lesbian and Gay Law Association ("NLGLA") was founded in 1988 as a national association of

lawyers, judges, other legal professionals, law students and affiliated lesbian and gay legal organizations. NLGLA's mission is to promote justice in and though the legal profession for the lesbian and gay community in all its diversity, including, but not limited to, bisexuals, transgenders, people of color, and people with disabilities, including HIV.

The National Minority AIDS Council ("NMAC") is a national advocacy and technical assistance organization serving a membership of over 600 community-based organizations providing HIV/AIDS services to people of color throughout the United States and its territories.

The National Multiple Sclerosis Society's mission is to end the devastating effects of Multiple Sclerosis. The Society focuses on providing services to people with MS through its chapters and by funding research projects on MS.

The National Native American AIDS Prevention Center's (NNAAPC) mission is to prevent the spread of HIV and related diseases in American Indian, Alaska Native, and Native Hawaiian communities, and to improve the quality of life of those in our communities infected and affected by HIV. NNAAPC provides technical assistance, training, case management services, research and policy advocacy to and for Native Americans throughout the United States.

The National Organization on Disability ("NOD") promotes the full and equal participation of America's 49 million men, women and children with disabilities in all aspects of life. NOD was founded in 1982 as an outgrowth of the United Nations International Year of Disabled Persons. NOD is the only national network organization concerned with all disabilities, all age groups and all disability issues.

The National Organization for Rare Disorders ("NORD") is the unique federation of more than 140 voluntary health organizations dedicated to helping people with rare "orphan

diseases" and assisting the organizations that serve them. NORD is committed to the identification, treatment and cure of rare disorders through programs of education, advocacy, research and patient services.

The National Parent Network on Disabilities ("NPND") provides a presence and a voice in Washington, DC for parents of children, youth and adults with disabilities. NPND serves as a networking force to assist its 170 member organizations to work together on all disability related issues that affect their constituents. The major goal of NPND is to help parents and families to have all of the information, education, assistance and support needed to do the very best they can on behalf of their family member with a disability.

The National Therapeutic Recreation Society ("NTRS") represents and assists professionals and organizations involved in the provision of therapeutic recreation services to assist people with disabilities achieve maximum independence and rehabilitation. NTRS offers technical assistance, information and referral services to agencies, institutions and individuals on professional issues, trends, and directions in the field of therapeutic recreation.

The New York Lawyers for the Public Interest, Inc. ("NYLPI") is a nonprofit law office that works to protect the rights of people with disabilities. Through its Disability Law Center, NYLPI seeks to protect and promote the civil rights and liberties of people with disabilities and to enable them fully to participate in the mainstream of American life. NYLPI has been extremely active on issues involving the application of the ADA to discrimination in employment, government services, and public accommodation. NYLPI represents numerous individuals and files amicus curiae briefs on its own behalf and on behalf of disability and civil rights groups in cases around the country addressing the application of the ADA.

NISH (formerly National Industries for the Severely Handicapped) maximizes employment opportunities for people with severe disabilities through providing professional and technical assistance to not-for-profit community rehabilitation programs to encourage and assist their participation in the Javits-Wagner-O'Day (JWOD) Program and other employment or training activities as appropriate. NISH is the central nonprofit agency designated by the Committee for Purchase from People who are Blind or Severely Disabled to provide assistance to Work Centers interested in obtaining federal contracts under the JWOD Program. It is one of NISH's goals to expand employment, personal advancement and placement of people with disabilities by maximizing opportunities created by the JWOD Program while taking advantage of other employment opportunities. The civil rights of people with severe disabilities is of utmost priority to NISH primarily for the protection of employment rights. However, NISH also supports the protection of civil rights for people with disabilities in all areas to promote independent living and greatest opportunities for an integrated life with the rest of society.

Project Inform is the Nation's leading AIDS information and advocacy agency representing thousands of people with AIDS.

RESOLVE was founded in 1974 as a national, nonprofit consumer organization. RESOLVE's mission is to provide timely, compassionate support and information to individuals who are experiencing infertility and to increase awareness of infertility issues through advocacy and public education. For more than twenty years, RESOLVE has provided help to thousands of people experiencing the infertility crisis.

Title II Community AIDS National Network includes Ryan White Title II grantees and the people living with AIDS they serve.

The Union of American Hebrew Congregations ("UAHC") is the synagogue arm of the Reform movement and represents 1.5 million Reform Jews in more than 870 congregations nationwide. For over a century, the UAHC has fought passionately for religious liberty and tolerance for all Americans, believing these to be among the greatest gifts America has bestowed upon its citizens and the world. The UAHC played an active role in securing the passage of the ADA.